

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. SHERYL SKWARCZEK

Appeal from the Criminal Court for Davidson County
No. 2005-B-1278 Cheryl A. Blackburn, Judge

No. M2007-02579-CCA-R3-CD - Filed May 13, 2008

This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The Defendant has appealed the trial court's revocation of her probation. Upon a review of the record in this case, we are persuaded that the trial court was correct in revoking the Defendant's probation and ordering her to serve her sentence, and this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Rule of the Court of Criminal Appeals

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

Nathan Moore, Nashville, Tennessee, for the Appellant, Sheryl Skwarczek.

Robert E. Cooper, Jr., Attorney General and Reporter; John H. Bledsoe, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Bret Gunn, Assistant District Attorney General, for the Appellee, State of Tennessee.

MEMORANDUM OPINION

The Defendant pled guilty on August 25, 2005, to theft over \$1000. Prior to being sentenced, the Defendant tested positive on a drug screen. In sentencing the Defendant to three years in prison, the trial court indicated that she would be given probation if she successfully completed a drug treatment program. After completing a drug treatment program in prison, the trial court probated the Defendant's sentence on January 6, 2006. A probation violation warrant was issued on January 5, 2007, and the court held a hearing on the warrant on October 5, 2007. At the hearing, the

Defendant testified and admitted to violating the rules of her probation. Specifically, she stated she was not employed for six months, failed to report to her probation officer, tested positive for marijuana, and failed to perform public service work. Although she had various excuses for her failure to comply with the rules of her probation, she ultimately stated, “I really don’t know what is going on. I didn’t know and I didn’t realize how serious probation was or is, and now I actually do.”

After listening to the Defendant testify, the court stated, “I’m not very impressed with this defendant and her attitude about anything. I don’t think she’s being quite honest about the things that were going on that caused her to quit going to probation.” “Clearly she violated the program and admitted she did. The issue is what do I do.” After the court recognized that the Defendant previously stated she would conform to her probationary requirements and failed to do so, the court ordered her sentence to be served in jail. It is from this decision the Defendant now appeals.

When a trial court determines by a preponderance of the evidence that a probationer has violated the conditions of his or her probation, the trial court has the authority to revoke probation. T.C.A. § 40-35-311(e) (2006). Upon finding that the defendant has violated the conditions of probation, the trial court may revoke the probation and either: (1) order incarceration; (2) order the original probationary period to commence anew; or (3) extend the remaining probationary period for up to two additional years. *State v. Hunter*, 1 S.W.3d 643, 644 (Tenn. 1999); *see* T.C.A. §§ 40-35-308, 310, 311 (2006). The defendant has the right to appeal the revocation of his probation and entry of his original sentence. T.C.A. § 40-35-311(e). Upon a finding of a violation, the trial court is vested with the statutory authority to “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered” *Id.*; *accord Hunter*, 1 S.W.3d at 646 (holding that the trial court retains the discretionary authority to order the defendant to serve his or her original sentence in confinement). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension” T.C.A. § 40-35-310.

Relative to when a trial court may revoke probation and to the standard of review in an appeal of such an action, our supreme court has stated:

We take note that a trial judge may revoke a sentence of probation or a suspended sentence upon a finding that the defendant has violated the conditions of his probation or suspended sentence by a preponderance of the evidence. T.C.A. § 40-35-311. The judgment of the trial court in this regard will not be disturbed on appeal unless it appears that there has been an abuse of discretion. *State v. Williamson*, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981). In order for a reviewing court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred. *State v. Gear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980).

State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991).

Upon due consideration of the pleadings, the record, and the applicable law, we conclude that the Defendant has not proven that the trial court abused its discretion in concluding the Defendant violated her probation and ordering her to serve her sentence. The Petitioner admitted she failed to abide by the rules of her probation. After making this finding, the trial court was well within its rights to order the sentence to be served. Accordingly, the State's motion is granted. The judgment of the trial court is affirmed in accordance to Rule 20, Rule of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE